No. FST-CV-17-6032660

	:	**SUPERIOR COURT**
MR. BRUCE MORRIS,	:	
Plaintiff,	:	**JUDICIAL DISTRICT OF STAMFORD**
	:	**AT STAMFORD**
v.	:	
	:	
CITY OF NORWALK,	:	
NORWALK BOARD OF EDUCATION,	:	
AND NORWALK PUBLIC SCHOOLS	:	
DISTRICT,	:	
Defendants.	:	
	:	**APRIL 26, 2019**

MEMORANDUM OF LAW IN OPPOSITION

Plaintiff, by and through his counsel, does hereby submit this Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. As is set forth below, Plaintiff asserts that more than enough evidence exists to raise a dispute of material fact in that Plaintiff's employment was terminated by Defendants not for their proffered reason, but for impermissible discrimination based on race, color, his status as a legislator and in retaliation for opposing the aforementioned discrimination.

I. FACTS

A. Plaintiff's Work History and Experiences as an Employee of Defendants.

Plaintiff was hired on November 5, 1998 as the Director of Human Relations. Pl. Cmpt. ¶ 13; Pl. Ex. 1.; Pl. Aff. ¶ 1. At or around that time, Plaintiff was presented with a copy of the Director of Human Relations Job Description. Pl. Ex. 2. From about November 1998 to about September 2015, Plaintiff performed the job duties and responsibilities of a Director of Human Relations as outlined in the aforementioned Job Description. Pl. Aff ¶ 4. Plaintiff's job duties and responsibilities included monitoring the District's compliance with racial balance law and the Norwalk Plan, monitoring Board policies on Affirmative Action in personnel employment

and anti-discrimination mandates, researching school practices regarding race relations, minority achievements and related issues, serving on Affirmative Action and related committees as the Affirmative Action Officer and hearing complaints regarding discrimination on the basis of protected classes as codified in State and Federal law. Pl. Cmpt. ¶15; Pl. Aff. ¶2; Pl. Ex. 2.

The qualifications for Director of Human Relations required either a Bachelor's degree in Education or related field or five years of professional or administrative experience in education or community relations). Although Plaintiff did not have a Bachelor's degree, he did have 5 years' experience in community relations and administration. Therefore, he was qualified for the position. Pl. Aff. ¶ 3; Pl. Ex. 2.

During his employment as Director of Human Relations, Plaintiff received multiple yearly performance evaluations as well as letters of commendation and thanks for services performed. Pl. Ex. 3. Further, from November 1998 until approximately November 2015, Plaintiff was never disciplined for wrong-doing, failing to complete any task or poor work performance by Defendants. Pl. Aff. ¶ 5.

In 2006, Plaintiff ran for and was elected as a Representative to Norwalk for the 140th Assembly District. Pl. Aff. ¶ 6. Plaintiff served in that capacity from 2006 to January 2019. Pl. Aff. ¶ 6.

On June 25, 2012, Plaintiff was informed that his pay was cut due to the fact that the Board of Education voted to change his hours from 37.5 hours per week of work to 30 hours per week of work. Pl. Cmpt. ¶ 26; Pl. Aff ¶ 7.

Prior to the hiring of Dr. Steven Adamowski ("Adamowski"), Plaintiff directly reported to the Superintendent of Schools. No Superintendent prior to Adamowski ever informed

Plaintiff that he or she was concerned that Plaintiff's role as legislator was interfering with his job as Director of Human Relations. Pl. Aff. ¶ 8.

In or around June 2015, Plaintiff learned that Adamowski was to be hired as the new permanent Superintendent of Schools. Pl. Aff. ¶ 9. Shortly after his hire, in or around August or September, Adamowski and Plaintiff had a meeting, where he told Plaintiff that he would be reclassified as School Climate Coordinator. *Id.* Adamowski said that the reason for the re-classification was that the role of School Climate Coordinator was a very important part of the "Strategic Plan," especially by way of training teachers and other development. *Id.* At that meeting, Adamowski handed Plaintiff a piece of paper which said "School Climate Coordinator" and had seven (7) bullet point, vague job duties on it. Pl. Ex. 4; Pl. Aff. ¶ 9. Also, at that meeting, Adamowski brought up retirement with Plaintiff: specifically asking when Plaintiff was expecting to retire. *Id.*

Subsequent to Adamowski's hire, Plaintiff was told that as of his role change to School Climate Coordinator, he would no longer be reporting to the Superintendent. Pl. Aff. ¶ 10. Rather, Plaintiff would from then on be reporting to Adamowski's subordinate, Frank Costanzo ("Costanzo"). *Id.*

On multiple occasions, Plaintiff requested of Costanzo and Mr. Bob Dylewski, Human Resources ("Dylewski") for a full and complete Job Description, as the information provided to Plaintiff by Adamowski was incomplete. Pl. Aff. ¶ 11. Despite his repeated requests, Plaintiff was not given a job description for School Climate Coordinator until around December 2015. *Id.*

On November 6, 2015, Plaintiff sent an email to Dylewski and Costanzo indicating that he still did not have a job description for School Climate Coordinator. Pl. Ex.5; Pl. Aff. ¶ 12. Plaintiff also expressed his concern that Costanzo had alerted Plaintiff to the fact that he

(Costanzo) was already evaluating Plaintiff's performance as the School Climate Coordinator. *Id.* Further Plaintiff told Costanzo and Dylewski that he was still receiving phone calls from Administrators and parents about job duties that he had performed when he was the Director of Human Relations. *Id.*

In December 2015, Plaintiff received the full School Climate Coordinator Job Description. Pl. Ex. 6; Pl. Aff. ¶13. Under the section entitled "Qualifications Profile", the School Climate Coordinator is required to have a Bachelor's degree in Education or psychology. *Id.* Plaintiff does not have a Bachelor's degree so, therefore, he would not qualify for the position. Pl. Aff. ¶ 13.

After Plaintiff was re-classified to School Climate Coordinator, he was no longer able to take part in the hiring process for central office, no longer handling issues with respect to affirmative action and no longer handling complaints of discrimination. Pl. Aff. ¶ 14.

Plaintiff was told by Costanzo that he would no longer be responsible for several job duties and responsibilities such as homelessness liaison and Title IX Coordinator. Pl. Aff. ¶ 15. Despite this fact, as stated above, Plaintiff still received multiple phone calls from both employees and parents of students requesting information about homelessness and Title XI issues. Plaintiff was informed by Mr. Costanzo that Ms. Brenda Wilcox Williams (Caucasian) would be handling Title IX issues and that Pat Foley (Caucasian) would be handling the Homelessness liaison duty. However, when asked, Ms. Foley said that she never received assignment of Homelessness liaison. In fact, Plaintiff had to train Ms. Foley on the Homelessness Liaison job duty. Pl. Aff. ¶ 16.

Part of Plaintiff's new role as School Climate Coordinator was to perform anti-bullying training for practically every employee in the District. Plaintiff was given this assignment by

Costanzo in late January/early February of 2016. Costanzo told Plaintiff that all trainings had to be complete by end of March/beginning of April 2016. Once Plaintiff began the task, including attempting to coordinate the training with the District employees, he realized that the deadline set by Costanzo was unrealistic. Plaintiff told Costanzo on multiple occasions that additional time was needed to complete the trainings. In response, Costanzo said something like "this is part of your job" and to get it done. Plaintiff was finally forced to show Costanzo a spreadsheet of the calendar conflicts with the various employees to demonstrate that it would be physically impossible to schedule all of the trainings before the imposed deadline. Finally, Costanzo reluctantly extended the deadline to May or June of 2016. Pl. Aff. ¶ 17.

In or about November 2015, Plaintiff was required to leave the office on a personal matter. Plaintiff attempted to notify Ms. Maura Perrottelli that he was leaving, with no success. However, Plaintiff did have his cell phone on him and operating and the contact information was accessible to all in central office. In fact, Ms. Perrottelli and Ms. Pat Rivera (the Assistant to the Superintendent) had called Plaintiff several occasions before on his cell phone. Pl. Aff. ¶ 19.

Prior to returning to Central Office, Plaintiff received a phone call from Ms. Diane Albano. She told Plaintiff that parents of a child who was suspended were looking to speak with Costanzo about the appeals process, but he was nowhere to be found. Plaintiff told Ms. Albano that he did not handle appeals from suspensions and that Costanzo was the proper party. Upon returning to central office, Ms. Rivera approached Plaintiff. She confirmed that the parents were looking to speak with Costanzo, but he was nowhere to be found, and he couldn't be reached. Plaintiff again said he does not handle suspension appeals, but he nevertheless agreed to meet with the parents. Pl. Aff. ¶ 20.

Subsequently, Plaintiff received a reprimand from Costanzo for not alerting Ms. Perrottelli about the fact that he was leaving (and that the parents in question were looking for Plaintiff) in violation of Defendants' policy. Plaintiff told Costanzo that the parents were looking for him, not Plaintiff, and that although he was contacted by Ms. Albano via his cell phone, which has always been the practice of Central Office, no one could find or reach Costanzo. Despite this fact, Costanzo still gave Plaintiff a reprimand. Pl. Ex. 7. Pl. Aff. ¶ 21.

In the original reprimand, which is dated November 25, 2015, two facts were stated: First Costanzo stated that he, along with coordinators, directors, chiefs and even the Superintendent, is subject to the same protocol. Second, the reprimand states that Ms. Rivera was unable to contact Plaintiff. Third, the reprimand was classified as a "Standard Communication Protocol." This was all untrue. Pl. Ex. 7; Pl. Aff. ¶ 22.

Subsequently, Plaintiff was told by several co-workers, including David Hopp (Caucasian) and Chrissy Fensore (Caucasian), that the policy in question either did not exist or that they were never held to the same standard. Also, Dylewski told Plaintiff specifically that the policy in question did not exist. Pl. Aff. ¶ 23.

Plaintiff filed a Level II Grievance with Adamowski with respect to the reprimand. During the meeting regarding to the grievance, Plaintiff informed Adamowski that the parents were looking for Costanzo, not Plaintiff. Further, Plaintiff told Adamowski that no one could find or contact Costanzo. Despite this, two things happened: 1.) the reprimand against Plaintiff was upheld by Adamowski; and 2.) Adamowski did not discipline Costanzo for the same policy violation. Pl. Ex. 8. Pl. Aff. ¶ 24.

Despite the fact that the reprimand was upheld, Costanzo gave Plaintiff a "revised" reprimand on or around February 19, 2016 and made the following changes: the Standard

Communications Protocol was now being referred to as a "standard courtesy protocol," the reference to Ms. Rivera not being able to contact Plaintiff was deleted entirely, and the employees who were subject to the protocol was limited now simply to Costanzo, the School Preparedness Coordinator and the Director of School Improvement. Pl. Ex. 9; Pl. Aff. ¶ 25.

Plaintiff recalls that the Reprimand was again changed in or around March 2016 and it was reclassified from "Reprimand" to "Written Warning." This put it outside the jurisdiction of the Collective Bargaining Agreement which specifically says that "written warnings" are excluded from the grievance process. Pl. Aff. ¶ 26.

Plaintiff complained to several individuals about being discriminated against because of his race, color and status as a legislator. Plaintiff specifically complained to Board Member Barbis, Mayor Rilling, Attorney Jeffrey Spahr (Defendant's attorney), Mr. Dylewski and Adam Bovilsky (Defendant City's Human Relations Director). Pl. Aff. ¶ 27.

In or about May 16, 2016, Adamowski again brought up the subject of retirement with Plaintiff. He said that the Defendants were looking for cost-cutting measures, including cuts to central office. During this meeting, Adamowski asked if Plaintiff would consider looking at a retirement package. Plaintiff agreed to the review. However, at no time during this meeting did Adamowski tell Plaintiff that his position was eliminated (or even being contemplated for elimination) in the next year's budget. Pl. Cmpt. ¶ 38; Pl. Aff. ¶ 28.

In or about May 23, 2016, Plaintiff filed Charges of Discrimination with the CHRO and the EEOC against Defendants for their discriminatory conduct to that date. Pl. Cmpt. ¶ 37; Pl. Aff. ¶ 29.

After Plaintiff filed his Charges, on or about June 16, 2016, for the first time, Dr. Adamowski provided Plaintiff with a draft retirement package. As part of the package, Plaintiff

would have had to agree to dismiss his Charges as well as waive any and all rights to bring legal action against the Defendants. On or about June 24, 2016, Plaintiff informed Adamowski that he was refusing to sign the package as offered. It was then for the first time, that Adamowski told Plaintiff that if he did not agree, that Plaintiff's job would be eliminated. Again, Plaintiff refused to accept the package. Pl. Cmpt. ¶ 39; Pl. Aff. ¶ 30-31.

As a result, Plaintiff was fired from his employment effective June 30, 2016. Pl. Cmpt. ¶ 41.; Pl. Aff. ¶ 32.

After his termination, Roger White (Caucasian, non-Legislator), a retired housemaster, was brought out of retirement to assume responsibilities over suspension and expulsion proceedings, which was a function Plaintiff was responsible for prior to being fired. Pl. Aff. ¶ 33.

B. Board of Education Involvement in Plaintiff's Employment-Discriminatory Intent of Board of Education and Adamowski.

From about the time of his election up through the remainder of Plaintiff's employment, Chairman of the Board Michael Lyons ("Lyons"), and other Board Members, displayed racist and discriminatory attitudes towards Plaintiff and others in the black community. Said displays of racial and discriminatory conduct are as follows.

On February 9, 2012, Lyons wrote an email to several individuals, including then Board Members, in which he said the following:

> "The Curriculum meeting went very well, and Core Knowledge (CK) was well-received.
>
> …
>
> "Bruce Morris started in with how inadequate the CK curriculum was because it didn't recognize minorities…Then Morris said that 'things like this wont work with African-

> Americans because of their 'unique circumstances'' and that the schools need to focus on 'building pride in their culture as the way to get black kids to learn.'
>
> …
>
> "(which theory, at base, ***is something southern crackers would agree with ('everyone but blacks can learn, 'cause blacks are inferior')!).***"
>
> Pl. Ex. 10.

On February 2, 2015, Mr. Barbis emailed Mr. Lyons that the Defendant City was going to leave the Board's budget alone, so "no way to cut [Bruce] Morris." Barbis then suggested that the Board of Education "should ask the City to cut us?" Pl. Ex. 11.

That same day, in the same email chain, Mr. Richard Rudl sent an email to Mr. Lyons and Mr. Barbis stating, in part: "[y]ou could have the superintendent based on the blum shapiro study going on right now recommend a district wide clerical reorganization … That could be used to 'reconcile' out positions you want to remove like Bruce…" Pl Ex 11.

On May 2, 2015, Mr. Lyons wrote in an email to Mr. Meek and Mr. Barbis:

> "That settles it for me; I don't care how much the Trio want a black superintendent, we need to get a certified ball-buster in here (Adamowski) to clean this s—t up."
>
> Pl. Ex. 12.

On May 7, 2015, Mr. Lyons writes in an email to Mr. Connelly and Mr. Barbis:

> "Bruce Morris – regular reports? – No action planned; Jim meeting with Bruce bi-weekly (Bruce to use Novatime) – ***major problem, to be left for Adamowski…"***
>
> ***(emphasis added)*** Pl. Ex. 13.[1]

[1] Adamowski acknowledges receipt of the email on June 21, 2015. Pl. Ex. 13.

On June 23, 2015, Mr. Meek writes to Mr. Lyons: "Morris looks like an easy down payment anyway. It really sucks we have to keep dead wood." Pl. Ex. 14.

On June 24, 2015, Lyons writes to Kassimis, Keyes, Barbis, and Meek, in part:

> "OK, team, budget tomorrow night.
> …
> So. How to come up with the other $75K? Rudl came up with a whole smorgasbord of potential cuts, large and small, that he ran by Connelly and Connelly rejected. Top of the list? Bruce Morris; saves over $80K and solves the budget problem. ***I ran that possibility past Adamowski*** and he asked that we not do that. ***He fully understands what a snake Morris is, but having been appointed a racial vote, he doesn't want a race war starting up over Morris just as he's taking office***. He intends to tell Morris that whatever his previous arrangements were, under [Adamowski} he is to work 32 hours per week <u>in the buildings</u> (verified by the card check system). Under the applicable state statute, we get first dibs on his [time], not the legislature. So the 'work by phone' option he'll have to use for his <u>legislative</u> job, not the NPS job. ***That change will severely curtail Morris' political activities, and he'll have to decide if he wants the $80K and is finally willing to earn it, or if he's willing to take a big pay cut so he can be 'big man on campus' in Hartford. But better leave this to Adamowski, who can build a solid record on Bruce, than for us to lay him off and have protests from now to election day.***
> ….
> So, this restores the $75K cut made by Connelly…***leaves Morris for another day (per Adamowski's request, avoids a race war,*** doesn't set the soccer moms off by laying off aides, and gets us through another budget year…"
>
> ***(Emphasis added)*** Pl. Ex. 15.

On July 4, 2015, Lyons, in an email to Adamowski, states, in part…

> In other news, Jim told me that he asked to meet with the U.S. Attorney in New Haven. They are looking at a number of cities in CT for 'informal compliance reviews'…He told them to use Bruce Morris as their contact point in Norwalk. You'll want to talk to Bruce on that (and given the importance, maybe chose (sic) someone more reliable as liaison). Pl. Ex. 7. Lyons then forwarded the email to Barbis, Kassimis, Keyes and Meek. That same day, Barbis replied: "Juicy s—t Mike. The US Attorney??? Definitely don't let Morris in on that … he'll really screw it up."

Pl. Ex. 16.

In a response email, Lyons stated: "I'd put Morris in charge of a nuke before I'd put him in charge of a US Attorney audit!" Pl. Ex. 16.

On January 18, 2016, in an email to Hayne, Lyons wrote the following:

> "If you interacted with the new crew (Conner, Costanzo) you'd be very impressed; they are sharp and tough.
> …
> And through 'retirements' and terminations: Ditrio is out in June, Ives and Mauren jones are out on 2/1. ***Moore is feeling the pressure; Morris will probably be gone by June. Change is coming."***
>
> (***emphasis added)*** Pl. Ex. 17.

On January 30, 2016, in an email to Barbis, Keyes, Kassimis and Meek, Lyons wrote: ***"Here it is. Bye Bye Brucie! Morris and his assistant's positions are eliminated in this budget." (Emphasis added).*** Pl. Ex. 18.

On February 9, 2016, Lyons, in an email to Mr. Bruce Kimmel, refers to Plaintiff as one of the "Four Horsemen" and three black and Hispanic members of the Board (Ms. Murray, Ms. Rivas and Ms. Mosby) as the "Trio." Pl. Ex. 10. Further, Lyons goes on to say:

"Now we FINALLY have the pieces in place – Daddona gone, Ditrio leaving 6/30, ***Morris on life support***, Moore isolated, Murray and Rivas gone, ***Conner and Costanzo in place… (Emphasis added)*** Pl. Ex. 19.

Additionally, in the same email, Lyons writes: "if you think these 'scenarios' are just Sal Corda-like gamesmanship, wait until the parents start realizing their first grade aides are gone along with a bunch of other positions ***(including one in central office that will set off the usual caterwauling from the 'minority community'). (emphasis added)*** Pl. Ex. 19.

MICHAEL LYONS DEPOSITION

At his deposition, Mr. Lyons testified that he called Plaintiff one of the "Four Horsemen" because he was a no-show, more focused on his political career, not supervising his direct report and that former Superintendent Dr. Manny Rivera, did not know Plaintiff was his direct report, that an excessive amount of minority children were being sent to special education, and that he was not performing some of his jobs.[2] Lyons Depo. Tr. Vol. I. PGS 233-236.

With respect to the conversation that is catalogued in Pl. Ex. 15, Lyons testified that Adamowski told him the following:

> "I just got appointed on a racial split vote as superintendent. Five white people voted for me, four blacks and Hispanics voted against me. I really don't want you eliminating the job of a prominent black politician just as I'm taking office. It's going to create a big controversy, and I don't want to come in on that … it would be a big racial incident…"

Lyons Depo. Tr. VOL I. Pg. 242-243.[3]

Below is Mr. Lyons' definition of the term "Race War," as used in Pl. Ex.15:

"Race war to me is when people make a big cause celebre out of something and turn a dispute that may not, in fact, have anything to do with people's skin color into something based on skin color. And this become – and you rally people and you get them to come to city

[2] When asked about being a no-show, Lyons testified that he was told by several people (none of which was Plaintiff's supervisor) that Plaintiff was seek at West Rocks Middle School and not in his office at City Hall. However, even Lyons admitted that part of Plaintiff's job was to travel to different schools in the District for meetings. See Lyons Depo. Tr. Vol I. PGS. 236-238.

[3] Adamowski, about that same exact meeting, stated that he said the following: "I may have conveyed to him that as a new superintendent, you know, everybody gets a chance to start over, I have to evaluate everyone, their positions and all of that on the basis of, you know, what I feel is best for the school district. I was sensitive to the fact that the vote on me had been along racial lines, as we discussed earlier. I was aware that Mr. Morris was a legislator. I was aware of his race. I was aware that there were many people in central office of different races and religions and orientations, and I wanted an opportunity to make these judgments on the merits myself, and I was not in a position to make any opinion at that point on anyone." Adamowski Depo. Tr. Pg. 32-33.

hall with signs and all that kind of stuff, which I have been through a few times. And Adamowski didn't want that as he was starting up."

Lyons Depo. Tr. Vol. I. PGs 243-244.

Below is Mr. Lyons' Definition of the term "Snake" as applied to Plaintiff in Exhibit 15:

> "I felt that Mr. Morris was a person who had used his political connections to get himself three government payrolls for his family. He's working for the city, his wife is working for the city, and he's working for the state. And he had, as far as I could tell or anybody could tell, no significant achievements that I could see. That, you know, he hadn't brought us any big ECS funding increases or anything in all the years he was in the legislature. He hadn't accomplished anything that I could see of any significant value for the school system. We got cited by the state for failures with SPED and failures with disciplining of minority students. And, you know, this is a guy who played politics to get himself multiple payrolls. And all power to him; but, you know, not my ideal of what you should be doing in politics."[4]

Lyons Depo. Tr. Vol I. PG. 248-249.

With respect to Costanzo, Lyons testified as follows:

> Q: Do you recall if you ever asked Dr. Adamowski if Mr. Costanzo would be a team player or would be somebody who would follow instruction from Dr. Adamowski?
>
> A: Oh yea, I'm sure that it was important to us to have an administrative staff that was going to support the superintendent and the board.
>
> Q: Okay. And so you recall asking those questions about whether or not Mr. Costanzo would be supportive of the superintendent and the board?
>
> A: Yeah. I'm sure we talked about that.
>
> Q: Okay. Do you know if – do you know what Dr. Adamowski's response was? Was it yes, he will be, or, no, he won't be?

[4] As stated above, Mr. Lyons implicated that Plaintiff's Wife only got her job because of Plaintiff's political influence. When asked for evidence to support that proposition, his response was: "That's just speculation." Lyons Depo. Tr. Vol. I. PG 251-252.

Objection

A: Yes, I understand. Yeah, I'm sure he told me that Conner, Costanzo, the other folks were going to be, you know, team players that were going to work to get the strategic plan implemented."

Lyons Depo. Tr. Vol II. Pg. 280-281.

Lyons testified that none of the recipients of his January 30, 2016 email indicated that they did not want to see Plaintiff's position eliminated from the budget. Lyons Depo. Tr. Vol. II. PG 292.

Lyons also testified about the Board being called unethical by Mr. Bruce Kimmel:

Q: Who was calling the board, or any member of the board, unethical? Was that Mr. Kimmel or –
A: Kimmel said that.
Q: He said some members of the board were being unethical?
…
A: He said it was unethical for us to build up such a – what he felt was an excessively large insurance reserve.
Q: Do you recall sitting here what that insurance reserve amount was that he thought was too high?
A: No. I'd be guessing. I mean, it was multimillions.

Lyons Depo. Tr. Vol. II PG. 297-298.

Lyons admitted that prior superintendents (Dr. Rivera and Mr. Connelly) did not once recommend that either Plaintiff's position, or Plaintiff himself, be terminated from employment. Lyons Depo. Tr. Vol. II PG. 337-338.

STEVEN ADAMOWSKI DEPOSITION

Adamowski testified that Plaintiff's job as School Climate Coordinator was "less important" than others. Adamowski Depo. Tr. Pg. 9.

Adamowski testified that he hired Mr. Rios, which was one of the positions being considered for elimination along with Plaintiff's position. Adamowski Depo Tr. Pg. 12 - 13.

Adamowski admitted that Lyons told him that Plaintiff had issues with time and attendance and he also testified that it was a "widely held perception." However, when asked, Adamowski could not recall even one other person who held that "perception" about Plaintiff. Adamowski Depo. Tr. Pg. 30-31.

Adamowski admitted that he was the one who chose Mr. Costanzo to be hired by the District. Adamowski Depo. Tr. PG. 47-48. Further, Adamowski admitted that he never issued any discipline against Mr. Costanzo. Adamowski Depo. Tr. PG. 59.

With respect to discipline, Adamowski agreed that the existence of a letter of reprimand in an employee's file would be a negative against them in future disciplinary actions. Adamowski Depo. Tr. PG. 61-62.

With respect to School Climate Coordinator, Adamowski testified that the following people assumed those responsibilities after Plaintiff was fired: Costanzo, Patty Foley, Arlene Gottesman and Javier Padilla. Adamowski Depo. Tr. PG. 103-104.

Adamowski also testified that he believed that Plaintiff was not qualified for the Director of Human Relations position that he had held for almost eighteen years. In fact, Adamowski claims, without any evidence in support, that Plaintiff only got the job as Director of Human Relations because of the need to accommodate Plaintiff "for political reasons." Adamowski Depo. Tr. PG. 112-115.

FRANK COSTANZO DEPOSITION

At his deposition, Mr. Costanzo testified that he knew Dr. Adamowski prior to being hired by Defendants. Costanzo Dep. Tr. PGS 8 – 9. After his hire, despite the fact that he was going to be the supervisor of several employees, he decided it was not necessary to review his new subordinates' personnel files. Costanzo Dep. Tr. PGS 31 – 33. In fact, even though he was

going to be Plaintiff's supervisor, he did not even have an understanding as to the scope of Plaintiff's job or whether it was important to understand which functions Plaintiff would be performing and which ones he was not performing. Costanzo Depo. Tr. PG 51-52. Costanzo does not even remember how he came to learn that Plaintiff would be his direct report. Costanzo Depo. Tr. PG 65.

Costanzo recalls that Plaintiff complained to him about not having a job description for School Climate Coordinator, but that it was of no concern to him. Constanzo Depo. Tr. PG 68. When Costanzo reviewed the School Climate Coordinator Job Description, he testified that although the first six bullet-pointed functions are important, but the remainder is not primary, despite the fact that all job duties are listed on the Job Description as "Major Duties and Responsibilities." Costanzo Depo. Tr. PG 81-82; See Pl Ex. 6.

After Plaintiff's separation from employment, the job functions of School Climate Coordinator were distributed to several people: Patty Foley, Arlene Gottesman, Mr. Ronald White (Caucasian) and Mr. Joe Rios (Hispanic). Costanzo Depo Tr. PG 82-83, 85-86, 123-125.

In winter of 2016, Costanzo learned for the first time from Thomas Hamilton that Plaintiff's job would be eliminated and Costanzo had no opinion on the matter. Costanzo Depo. Tr. Pg. 109. What is more, he never advocated for Plaintiff to be retained. Costanzo Depo. Tr. PG. 111.

Costanzo testified that he required Plaintiff to maintain a log and keep track of his hours. Costanzo Depo. Tr. PG 135. He also testified that although the NOVAtime system was in place (the purpose of which is to record and monitor employee start and end times), he still required Plaintiff to create an additional log because NOVAtime is "inefficient." Costanzo Depo Tr. PG.

137.[5] Despite his assertion that NOVAtime was inefficient, which was a system used by all employees of the District, Costanzo testified that Plaintiff was still the only employee he required to make a log of his time. Costanzo Depo. Tr. PG. 138.

With respect to the reprimand Plaintiff received, Costanzo testified that he does not recall where he was that day, but he does recall he was not available to meet with the parent in question. Costanzo Depo. Tr. PG. 148. He testified, under oath, that he told either Ms. Rivera or Ms. Perrotelli where he was going to be and how to contact him. Costanzo Depo. Tr. PG. 150.[6] He also testified that, although there is exceptions to the protocol, such as if there is an "emergency," then there would be "flexibility." Costanzo Depo. TR. Pg. 151. However, despite that, Costanzo never even sought to find out what Plaintiff's rationale was for leaving that day. Costanzo Depo. Tr. PG. 152.[7]

Costanzo testified that, with respect to Plaintiff's former job of Director of Human Relations, the job function of monitoring the district's compliance with racial balance laws fell to Adamowski. Costanzo Depo. Tr. PG. 166-167. With respect to the "Affirmative Action and related committees" job function previously performed by Plaintiff, Costanzo testified that there is no present Affirmative Action Committee in Norwalk, nor is he aware of there being one at the time he was hired by Norwalk. Costanzo Depo. Tr. PG. 177.

As part of the qualifications for a Director of Human Relations, it was required that the applicant have the experience as it related to the following: "Understanding the historical

[5] "It hasn't been strictly enforced. People forget to swipe out; they forget to swipe in. So it's not something that you can count on for accuracy." Costanzo Depo. Tr. PG. 137.

[6] This is in direct contradiction to what Pat Rivera told Plaintiff. See Plaintiff's Affidavit, ¶ 20.

[7] In his deposition, Plaintiff testified that he was called by his granddaughter and she needed him to pick her up from school immediately. Morris Depo. Tr. PG. 128.

development and contemporary significance of majority-minority relations in the United States." See Pl. Ex. 3. When asked about two employees whom he believed took over some of the Director of Human Relations functions from Plaintiff, Costanzo goes on to make a specific judgment about the employees not because of their qualifications, education or work history, but simply because of the fact that they are minorities:

> "Q: Now, have you ever taken the time to review Mr. [Javier] Padilla's resume and application for employment?
>
> A: I have.
>
> Q: Okay. And what is his background with respect to understanding the historical development and contemporary significance of majority-minority relations in the United States?
>
> A: First is he's a minority person and grew up in Hartford as a Latino man and worked for a long time at Children's Hospital in Hartford. And just through his personal experiences, I would say, certainly qualify him for understanding the unique challenges that are faced by people of color."[8]
>
> …
>
> Q: What about Mr. [Anthony] Shannon, what is his background that would lead you to believe that he has that similar understanding?
>
> A: Again, in his case, African-American male, grew up in Bridgeport, and later Rocky Hill. Really an excellent individual who got a law degree from UConn, worked at Shipman & Goodwin as our attorney for some time. And I would say, ***just by virtue of his being black***, has an understanding of the historical significance, not to mention the programs that he attended."
>
> Costanzo Depo. Tr. PG. 188-190.

[8] Costanzo then jumps to an unsupported conclusion that simply because Mr. Padilla has a bachelor's degree and law degree, that he intuitively received the knowledge to satisfy this requirement.

Costanzo confirmed that if the reprimand against Plaintiff had remained in place, then it could have been used against him in further disciplinary action. Costanzo Depo. Tr. PG 201-202.

Costanzo testified that (a) the goals of the School Climate Coordinator were important to the District and (b) that Plaintiff had never failed to meet those goals during his employment. Costanzo Depo Tr. PG. 202-203.

MICHAEL BARBIS DEPOSITION

Mr. Barbis testified that, with respect to Plaintiff's Exhibit 15, and Lyons' comments about Plaintiff, there is nothing that he disagrees with. Barbis Depo. Tr. PG. 11.

Mr. Barbis testified that one of the persons who allegedly told him of problems with Plaintiff's time and attendance was former Interim Superintendent James Connelly:

> "Q: Okay. What about Mr. Connelly, what do you remember Mr. Connelly telling you?
>
> A: I think – I remember the consistent message that attendance was an issue.
>
> Q: Are you aware, sir, of a Norwalk – Nancy on Norwalk news article in which Mr. Connelly said that he never had an issue with Mr. Morris' attendance?"
>
> …
>
> A: I mean, Nancy – what does she know? She's a reporter."
>
> Barbis Depo Tr. PG. 26-27.[9]

Mr. Barbis testified that he was not sure whether February 2, 2015, the date of his email to Mr. Lyons, was the first time that he ever brought up the idea of terminating Plaintiff. Barbis Depo. Tr. PG 39; Pl Ex. 11.

[9] Plaintiff attaches to this filing the referenced News Article where Mr. Connelly is reported to have said, among other things, "I haven't had any problem at all knowing where [Plaintiff] is, and being responsive." See Pl. Ex. 20.

Mr. Barbis testified as to the following:

> "As you suggested, I am on the board of education and we have certain responsibilities. Our responsibilities are the budget, hiring and reviewing of the superintendent, and setting policy. Those are really our three jobs. We don't micromanage; we don't define jobs; we don't oversee individuals; we don't tell people how to do their jobs."

Barbis Depo. Tr. PG. 84.

Mr. Barbis also testified that he did not know whether other factors came into consideration when deciding to eliminate Plaintiff's position:

> Q: Right. Would you agree with me, though, sir, that part of the consideration to eliminate Mr. Morris's job was not because of the budget. Part of it was because he was viewed as a snake and a political opportunist?
>
> Defense Counsel's Objection…
>
> A: I don't know.

Barbis Depo. Tr. PG. 87.

MAYOR HARRY RILLING

Mayor Rilling testified that he was against cutting Plaintiff's Position:

> A: We had a meeting. I'm not sure if Mr. Morris was there; I can't recall. But I know that Mike Barbis was there; Bobby Burgess was there; I was there; Reverend Curtis was there. And we indicated that he would not like to see – I'm not sure whether it was cut the position or have the position terminated – have Mr. Morris terminated. Not sure exactly what it was, but we made it clear that we were not in favor of it.
>
> Q: Okay. And why weren't you in favor of it?
>
> A: Well, I've known Mr. Morris for a while. I haven't heard significant problems, and I couldn't understand what the rationale was behind it.
>
> …

Q: Do you recall any discussions at that meeting about there being a list of minority administrators who were being targeted by the board?

A: That might have been mentioned. I don't know – I don't believe a list was produced, but it might have been mentioned. I've heard that rumor.

Rilling Depo. Tr. PG. 20-21, 23.

Mayor Rilling also questioned the decision of the Board to cut Plaintiff's position for budgetary reasons:

Q: Okay. Now you testified earlier that, at least up until the point that Dr. Adamowski was hired to be the new superintendent, you had expressed your opposition to any cutting of Mr. Morris' job or elimination of the position entirely?

A: Yes.

Q: Okay, so to this day, you still feel that Mr. Morris should not have been eliminated from his job?

Objection

A: Yeah. It was more the elimination of the position…and I had concerns about it.

Q: What were your concerns about eliminating the position?

A: The rationale behind it, was it solely to save money? Were there other cuts that could have been made? Or how did – the original way it came to me was that Dr. Adamowski indicated that he had a conversation with Mr. Morris, at which point he felt that Mr. Morris was open to retirement –"

Rilling Depo. Tr. PG. 27-28.

Rilling also testified that he has received complaints from members of the community (Brenda Penn Williams and Reverend Lindsay Curtis) against Mr. Lyons for racial insensitivity and racial discrimination. Rilling Depo. Tr. PG. 38-39.

II. SUMMARY JUDGMENT STANDARD

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law… In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party … The party seeking summary judgment has the burden of showing the absence of any genuine issue of material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law … and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact … A material fact … is a fact which will make a difference in the result of the case … (*Internal Quotation Marks Omitted*) *Romprey v. Safeco Ins. Co. of America*, 310 Conn. 304, 312, 77 A.3d 726, 731 (2013). See also *State Farm Fire & Casualty Co. v. Tully*, 322 Conn. 566, 573, 142 A.3d 1079, 1084 (2016) ("In seeking summary judgment, it is the movant who has the burden of showing the nonexistence of any issue of fact. The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law. The courts hold the movant to a strict standard. To satisfy his burden the movant must make a showing that it is quite clear what the truth is, and that excludes any real doubt as to the existence of any genuine issue of material fact… As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent.") *Mott v. Wal-Mart Stores East, LP*, 139 Conn. App. 618, 631, 57 A.3d 391 (2012). (A judge's function when considering a summary judgment motion is not to cull out the weak cases from the herd of lawsuits waiting to be tried; rather, only if the case is dead on arrival,

should the court take the drastic step of administering the last rites by granting summary judgment.")

III. ARGUMENT

Plaintiff has brought Five (5) Causes Action against Defendants pursuant to Conn. Gen. Stat. §§ 46a-60 and 2-3a for race/color discrimination, retaliation, and discrimination against legislators. As is demonstrated below, Plaintiff has more than enough evidence to prove that his employment was terminated because of his Race/Color (African-American/Black), his Status as a Legislator and in retaliation for his complaints of discrimination.

A. Plaintiff's Race and Color were Clearly Factors in Defendants' Decision to Terminate his Employment.

Connecticut General Statute Section 46a-60 states, in part:

> "It shall be a discriminatory practice in violation of this section: For an employer, by the employer or the employer's agent … to discharge from employment any individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment because of the individual's race [and] color…"

CGS § 46a-60(b)(1).

The legal standards governing discrimination claims involving adverse employment actions are well established. "The framework this court employs in assessing disparate treatment discrimination claims under Connecticut law was adapted from the United States Supreme Court's decision in *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and its progeny. *Lyon v. Jones*, 291 Conn. 384, 406—407, 968 A.2d 416 (2009). We look to federal law for guidance on interpreting state employment discrimination law, and the analysis is the same under both. *State v. Commission on Human Rights & Opportunities*, 211 Conn. 464, 469—70, 559 A.2d 1120 (1989). *Craine v. Trinity College*, 259

Conn. 625, 637 n.6, 791 A.2d 518 (2002). Under this analysis, the employee must first make a prima facie case of discrimination. Id., 637. In order for the employee to first make a prima facie case of discrimination, the plaintiff must show: (1) the plaintiff is a member of a protected class; (2) the plaintiff was qualified for the position; (3) the plaintiff suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that give rise to an inference of discrimination. See *McDonnell Douglas Corp*. v. Green, supra, 802. The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. *Craine v. Trinity College*, supra, 637. This burden is one of production, not persuasion; it can involve no credibility assessment. . . . *Board of Education v. Commission on Human Rights & Opportunities*, 266 Conn. 492, 506, 832 A.2d 660 (2003). The employee then must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias. *Craine v. Trinity College*, supra, 637." (Internal quotation marks omitted.) *Feliciano v. Autozone, Inc*., supra, 142 Conn. App. 769—70.

i. Prima Facie Case

Although not specifically challenged by Defendants in their Motion, Plaintiff can easily satisfy the first three elements of the prima facie case. First, Plaintiff is a member of protected classes as described in § 46a-60 (Black and African-American). Cmpt. ¶ 13. Second, Plaintiff was qualified for the job as both Director of Human Relations and School Climate Coordinator. Pl. Aff. ¶ 3.[10] Third, Plaintiff's employment was terminated involuntarily. As such, Plaintiff satisfies his burden with respect to the first three elements of his prima facie case.

[10] As is discussed more fully below, Plaintiff was not technically qualified for the position of School Climate Coordinator, nevertheless Defendants assigned him that role. Moreover, Defendants are not claiming Plaintiff was

With respect to prong four (giving rise to the inference of discrimination), Plaintiff argues that any reasonable analysis of both the Defendants' conduct as well as the intent described in the multitude of email exchanges clearly establishes such an inference. First, let us remember the timeline: Plaintiff was an employee of the Defendants since 1998; he had the same job for nearly two decades (Director of Human Relations); he has no disciplinary history; he has satisfactory or better performance reviews; and he has received accolades from his Supervisors.

However, as early as 2012, Lyons and others were making racist and discriminatory comments about Plaintiff and others in the black community. Lyons refers to the "usual caterwauling from the 'minority community.'" He refers to Plaintiff as a "snake," that a "solid record" needs to be built on Plaintiff to "avoid a race war," and that Plaintiff is one of the "Four Horsemen." Lyons also makes reference to "southern crackers," essentially belittling Plaintiff for seeking what is best for the black community. But Lyons' comments do not stop with Plaintiff. Even during the search for a superintendent, Mr. Lyons interjects and color:

> "That settles it for me; I don't care how much the Trio want a black superintendent, we need to get a certified ball-buster in here (Adamowski) to clean this s—t up."
>
> Pl. Ex. 12.

It is also quite clear from the email chains (and a jury could easily conclude) that Lyons (Chairman of the Board), the four members of his "Team" (all Board Members), Adamowski and Costanzo were all on the same page when it came to terminating Plaintiff's Employment:

1.) February 2, 2015 – Email from Barbis to Lyons: "no way to cut [Plaintiff]. Maybe we should ask the City to cut us?

---

terminated from employment because he did not qualify for the position. Therefore, Plaintiff argues that Defendants have waived that claim.

2.) May 7, 2015: - Email from Lyons to Barbis and Connelly: "[Plaintiff] … major problem, to be left for Adamowski."

3.) June 23, 2015 - Email from Meek to Lyons: "[Plaintiff] looks like an easy down payment anyway… It really sucks we have to keep dead wood."

4.) June 24, 2015 – Email from Lyons to Barbis, Meek, Keyes, Kassimis: Top of the list? [Plaintiff] … But better leave this to Adamowski, who can build a solid record on Bruce … leaves Morris for another day (per Adamowski's request, avoids a race war…";

5.) January 18, 2016 – Email from Lyons to Haynie: "[Plaintiff] will probably be gone by June."

6.) January 15, 2016 – Email from Lyons to Barbis, Keyes, Kassimis and Meek: "Here it is. Bye Bye Brucie! [Plaintiff] and his assistant's positions are eliminated in this budget."

1.) February 9, 2016 – Email from Lyons to Kimmel: "Now we FINALLY have the pieces in place – Daddona gone, Ditrio leaving 6/30, Morris on life support, Moore isolated, Murray and Rivas gone, Conner and Costanzo in place… (Emphasis added).

When we compare the plain context of the above email chains to the conduct of the Defendants, there ample evidence to support a finding of discriminatory intent: 1.) Adamowski hired; 2.) Adamowski is given his marching orders from Lyons to "build a solid record" on Plaintiff in an effort to set Plaintiff up for termination; 3.) Plaintiff immediately loses his Directorship, is made School Climate Coordinator and asked by Adamowski when he is going to retire; 4.) Adamowski hands Plaintiff a barely half complete job description; 5.) Costanzo (whom Adamowski hand picks and whom Lyons approves as a "team player") becomes Plaintiff's supervisor; 6.) Costanzo and Adamowski discipline Plaintiff for violating a policy while not similarly disciplining Costanzo for the same violation; 8.) Plaintiff's position is proposed for

elimination in the first round of budget proposals[11]; 9.) Plaintiff is not told that his position is being considered for termination by Adamowski until the very end of his employment; 10.) following through on the ultimate plan, Plaintiff is terminated; and 11.) Plaintiff's job duties are disseminated to others, including a new hire (White, retired housemaster). Based on the above factual and evidentiary pattern, Plaintiff can easily satisfy prong 4 of the prima facie case if race and color discrimination.

ii. "Legitimate, Non-Discriminatory Reason" of Defendant.

Since Plaintiff has established his Prima Facie case, as set forth above, the Defendants now are required to produce a legitimate, non-discriminatory reason. Plaintiff concedes that by alleging that the decision to terminate Plaintiff's job was for budgetary reasons, they have met their burden and claimed that the reason is simple: it was a non-discriminatory budget decision. However, as demonstrated below, their reason is pretextual for discrimination.

iii. Pretext.

Since the Defendants have produced their alleged legitimate, non-discriminatory reason, the Plaintiff must be given the opportunity to prove pretext. *See Craine v. Trinity College*, 259 Conn. 625, 644 (Conn. 2002) ("To prove discrimination, the plaintiff must prove that the defendant's stated nondiscriminatory reason for its decision was in fact a pretext for an unlawful motive. A plaintiff must be allowed the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination.") (internal quotation marks omitted).

In the instant matter, there is direct evidence that Defendants' real reason for terminating Plaintiff's employment were based on his race and color. By reviewing the emails between all of

[11] Pl Ex. 18.

the decision makers and their conduct, a reasonable jury could conclude that Defendants are merely using the excuse of a budget issue as a smoke screen for the truth of improper discrimination.

This pure discriminatory intent is clearly outlined in Lyons Email to his "team" on the Board of Education. Pl. Ex. 15. The jury could read this email and decide, quite reasonably, that, because Plaintiff is a black, African-American man, they have to "build a solid record" on him in the hopes of stifling any "race wars" that erupt if Plaintiff is simply terminated.

Another important consideration for the jury is Lyons statement as to why Plaintiff's position was eliminated and not another position. In an article published in The Hour, Lyons said: "It came down to [Plaintiff's] position and a security position. And particularly in the wake of the mass shootings like Orlando, we couldn't see the elimination of that part of the school systems." Pl. Ex. 21. In his deposition, Adamowski identified the security position in question as the Director of School Safety and Security position which, at the time, was held by Joseph Rios. Adamowski Tr. Pg. 12-13.[12] However, the Orlando Nightclub shooting occurred on June 12, 2016.[13] As has been demonstrated through the documented emails, the plan to terminate Plaintiff's employment began at least **no later than February 2, 2015**. See Pl. Ex. 10.

Further, the jury can come to a very real conclusion that the focus of the Defendants was not to eliminate the Director of Human Relations Position, or the School Climate Coordinator position, but eliminate *the Plaintiff*. In a review of the emails, Defendants and other authors never specifically refer to the Director of Human Relations position or the School Climate

[12] In fact, Adamowski admits it was he who hired Rios. Adamowski Tr. Pg. 13.

[13] Plaintiff is requesting the Court to take judicial notice of this event.

Coordinator position. They refer specifically to eliminating Plaintiff.[14] As such, the jury can reasonably conclude that the Defendants were not focused on elimination of *the job*, rather the focus was on eliminating *the Plaintiff*.

It is also interesting to note that two prominent figures either directly opposed the elimination of Plaintiff's job or were not able to answer whether any other considerations came into play besides the budget: Mayor Rilling and Board Member Barbis. As stated above, Mayor Rilling (the Mayor of the City that provided funding to the Board) questioned whether or not there were other cuts that could be looked into instead of cutting Plaintiff's position. Further, Board Member Barbis (the Board Member who voted for the elimination) did not know whether political motivations played a role in eliminating Plaintiff's position.

Lastly, the jury is permitted to examine the Defendants' decisions to remove most (eventually all) of Plaintiff's job duties and redistribute them to other employees outside Plaintiff's protected classes as a form of discrimination. In *McFadden* the U.S. District Court for the Eastern District of New York denied the employer's motion for summary judgment when it found that the Plaintiff and set out a prima facie case of discriminatory termination: that she was a member of a protected class; that she was qualified for the job; that her job was eliminated due to, according to Defendant, "restructuring"; and that her termination gave rise to the inference of unlawful discrimination. *McFadden-Peel v. Staten Island Cable*, 873 F. Supp. 757, 763 (E.D.N.Y. 1994).[15] Defendant then offered it "legitimate, nondiscriminatory reason" for the adverse action: elimination of Plaintiff's position as purely a business decision. *Id.* Plaintiff

[14] Plaintiff is referred to as "Morris," "Bruce Morris," and "Brucie."

[15] This particular case deals with age and sex discrimination, however the same *McDonnell Douglas* burden-shifting analysis applies.

then provides sufficient evidence to survive Summary Judgment: namely that her position was eliminated; the job duties of her position were divided and assumed by existing employees who are not within the Plaintiff's protected classes; and the Plaintiff's position was the only one that was affected by Defendant's restructuring. *Id. at* 764-765. See also *Montana v. First Federal Savings and Loan Association*, 869 F. 2d 100 (2nd Cir. 1989) (the Second Circuit reversed and remanded a grant of summary judgment for Defendant because as a result of an internal reorganization, Plaintiff's position was eliminated but the duties of the position were not eliminated and instead reassigned to employees outside of the Plaintiff's protected class). *Gallo v. Prudential Residential Services*, 22 F.3d 1219 (2nd Cir. 1994) (the Second Circuit reversed and remanded the district court's grant of summary judgment in favor of Defendant due to the fact that, within nine or ten months after Plaintiff's discharge, her duties which had been eliminated were resumed and assigned to employees who were not within Plaintiff's protected class).

In the instant matter, Plaintiff's job duties as Director of Human Relations (and eventually School Climate Coordinator) were taken away from him and given to other, non-black, non-African-American Non-Legislators. This shows that the Defendants **are not** claiming that the job functions carried out by Plaintiff are unimportant. Rather, the Defendants clearly demonstrate that the functions are important, they just wanted someone **who is not a Black, African-American Legislator** to perform them. As such, Plaintiff can establish pretext for discrimination.

iv. Mixed Motive

Even if a jury were to conclude that the "budgetary" reasons as produced by the Defendants were "legitimate" and "non-discriminatory," Plaintiff can easily show that other,

illegitimate and discriminatory considerations were contemplated by Defendants to give rise to a Mixed Motive analysis.

A "mixed motive" case exists when an employment decision is motivated by both legitimate and illegitimate reasons. See *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L. Ed. 2d. 268 (1989). In such instances, a plaintiff must demonstrate that the employer's decision was motivated by one or more prohibited statutory factors. Whether through direct evidence or circumstantial evidence, a plaintiff must "submit enough evidence that, if believed, could reasonably allow a fact finder to conclude that the adverse employment consequences resulted 'because of' an impermissible factor." *Tyler v. Bethlehem Steel Corp.*, 958 F.2d 1176, 1187 (2d Cir. 1992).

"The critical inquiry in a mixed-motive case is whether a discriminatory motive was a factor in the employment decision 'at the moment it was made." *Miko v. Commission on Human Rights & Opportunities*, 220 Conn. 192, 205, 596 A.2d 396 (Conn. 1991). Under this model, the plaintiff's prima facie case requires that the plaintiff prove by a preponderance of the evidence that he or she is within a protected class and that an impermissible factor played a motivating or substantial role in the employment decision. *Price Waterhouse* 490 U.S. at 258; *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274, 287, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

In the instant matter, there is both direct evidence of the Defendants' intent as well as circumstantial evidence of Defendants' intent to terminate Plaintiff's employment because of his race and color, which is described more fully above. As such, the jury would be well within its rights to hold that, although Defendants alleged reason seems legitimate, when coupled with the

illegitimate reasons, the decisions of the Defendant were improperly tainted by discrimination in violation of the law. As such, Plaintiff can established a mixed motive theory of liability.

B. The Evidence Presents a Clear Dispute that Plaintiff's Employment was Terminated for Retaliatory Purposes.

Section 46a-60(b)(4) prohibits an employer from discharging, expelling, or otherwise discriminating against, any person because such person has filed a complaint regarding a discriminatory employment practice. To establish a prima facie case of retaliation, a plaintiff must show four elements: (1) that he or she participated in a protected activity; (2) that the defendant knew of the protected activity; (3) an adverse employment action against him or her; and (4) a causal connection between the protected activity and the adverse employment action. *McMenemy v. Rochester*, 241 F.3d 279, 282-83 (2d Cir. 2001). For the purposes of a retaliation claim, an adverse action must be "materially adverse" or "harmful to the point that it could well dissuade a reasonable employee from making or supporting a charge of discrimination." (Internal quotation marks omitted.) *Hicks v. Baines*, 593 F.3d 159, 165 (2d Cir. 2010). By considering the perspective of a reasonable employee, we apply an objective standard. Id. "The alleged acts of retaliation need to be considered both separately and in the aggregate, as even minor acts of retaliation can be sufficiently substantial in gross as to be actionable." Id. Further, the retaliatory act need not bear on the terms or conditions of employment. Id. at 169.

In the instant matter, Plaintiff has established that he has complained about discrimination both informally and formally in the context of the CHRO complaints. Pl. Aff. ¶ 27, 29. The temporal proximity of those events coincide with the adverse job action (the Plaintiff filed his first set of Charges on May 23, 2016 and he was fired June 30, 2016, just over a month later). Moreover, the Defendants cannot claim unawareness of the complaint because it

was specifically made part of the retirement package that was presented to Plaintiff on June 16th. Pl. Aff. ¶ 30. As such, the Plaintiff can prove that his termination was the result of impermissible retaliation.

C. Sufficient Evidence Exists to Present a Material Dispute of Facts as it Relates to Plaintiff Protected Status as a Legislator.

Connecticut General Statute § 2-3a(a) states, in part:

> No employer of twenty-five or more persons shall discriminate against, discipline or discharge any employee because such employee (1) is a candidate for the office of representative or senator in the General Assembly, (2) holds such office, (3) is a member-elect to such office…

The level of judicial review on § 2-3a is sparse, at best. However, there can be no argument that this statute is, at its core, an "antidiscrimination in employment" statute, which is analogous to CGS § 46a-60: both deal with employment; both deal with discrimination in the workplace; and both deal with adverse action against the employee by the employer. See CGS § 46a-60 supra. The only difference between the two statutes in any meaningful respect is that § 2-3a creates a new protected category not encompassed by §46a-60: namely legislators. Given that fact Plaintiff argues that claims under 2-3a should be analyzed under the burden-shifting analysis applied to antidiscrimination laws under the standard *McDonnell Douglas* Framework. *See McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Ford v. Blue Cross & Blue Shield of Connecticut, Inc.,* 216 Conn. 40, 53-54, 578 A.2d 1054 (Conn. 1990). "Under this analysis, the employee must first make a prima facie case of discrimination. The employer may then rebut the prima facie case by stating a legitimate, nondiscriminatory justification for the employment decision in question. The employee then

must demonstrate that the reason proffered by the employer is merely a pretext and that the decision actually was motivated by illegal discriminatory bias." *Craine* 259 Conn. at 637.[16]

With respect to the Prima Facie case, again Plaintiff satisfies his burden: (1) he was a Legislator; (2) he was subjected to an adverse job action (termination); and (3) his termination gives rise to the inference of improper legislator discrimination.

In order to detect the direct, blatant and glaring evidence of the Defendants' intent with respect to legislator discrimination, one need go no further than to examine the email of the Chairman of the Board, Michael Lyons:

> "Under the applicable state statute, we get first dibs on his [time], not the legislature. So the 'work by phone' option he'll have to use for his legislative job, not the NPS job. ***That change will severely curtail Morris' political activities,*** and he'll have to decide if he wants the $80K and is finally willing to earn it, or if he's willing to take a big pay cut so he can be 'big man on campus' in Hartford. But better leave this to Adamowski, who can build a solid record on Bruce, than for us to lay him off and have protests from now to election day."

Pl. Ex. 15. (***emphasis added***).

It is also important to note, again, that Plaintiff has *never* been disciplined (with the exception of the November 2015 reprimand) for any infraction during his eighteen years as an employee, during which ten (10) of those years saw him as a legislator. As such, to the extent there was any concern by any Defendant that Plaintiff's legislative activities were interfering

[16] In that same vein, Plaintiff also argues that the "mixed motive" theory of discrimination as cited supra also applies under § 2-3a.

with his job, such allegations are not supported by the facts.[17] As such, Plaintiff satisfies the Prima Facie case of Legislator Discrimination.[18]

Another glaring piece of evidence is Mr. Lyons own testimony. Mr. Lyons was asked why Plaintiff was a snake, and part of his answer was as follows:

> **"That, you know, he hadn't brought us any big ECS funding increases or anything in all the years he was in the legislature."**

Lyons Depo. Tr. Vol I. PG. 248-249.

So we now come to the real reason why Lyons wanted Plaintiff gone. It was not because of budgetary issues. It was because Plaintiff did not use his power as a legislator to steer funding to the City of Norwalk's Board of Education. And due to the fact that Lyons was angry at Plaintiff for not using his legislative vote or legislative influence to steer grant money to Norwalk, he (Lyons) crafted this plan with the new Superintendent, Adamowski, to once and for

---

[17] Again, Defendants are not claiming that Plaintiff was terminated because he was not doing his job. Their only produced reasoning was budgetary.

[18] Plaintiff has claimed that is termination was caused because of multiple protected classes to which he belongs (Race, Color, Legislator, and retaliation). As such, the Plaintiff argues that this Court must recognize the proper interplay between the protected classes as they exist within the whole person. As was stated by the 2nd Circuity in the *Gorzynski* case:

> "We have recognized that a plaintiff's discrimination claims may not be defeated on a motion for summary judgment based merely on the fact that certain members of a protected class are not subject to discrimination, while another subset is discriminated against based on a protected characteristic shared by both subsets. *See* *Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 118-120 (2d Cir. 2004); *see also* *Jefferies v. Harris County Cmty. Action Ass'n*, 615 F.2d 1025, 1034 (5th Cir. 1980) (explaining the history of "plus" claims and recognizing a claim for discrimination against black females). And, as other courts have explained, where two bases of discrimination exist, the two grounds cannot be neatly reduced to distinct components. *See* *Lam v. Univ. of Haw.*, 40 F.3d 1551, 1562 (9th Cir. 1994) (acknowledging that "the attempt to bisect a person's identity at the intersection of race and gender often distorts or ignores the particular nature of their experiences" including a specific set of stereotypes and assumptions not shared by all persons of that race or gender)." *Gorzynski v. JetBlue Airways Corp.,* 596 F. 3d 93, 109-10 (2nd Cir. 2010).

all get rid of Plaintiff. This is just the sort of despicable activity the Legislature attempted to discourage when it passed § 2-3a.

IV. CONCLUSION

WHEREFORE, based on the foregoing, Plaintiff objects to Defendants' Motion for Summary Judgment and asks that it be DENIED.

Respectfully submitted by,

Plaintiff,
By and through his attorney,

/s/ Daniel T. Angelone, # 431232

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CERTIFICATION

I hereby certify that the foregoing was transmitted, electronic mail, to the following counsel of record on April 26, 2019:

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